

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.**FAO NO.374 of 2001****Judgment Reserved on: 1.5.2007****Date of Decision: 14. 5.2007****Smt. Pathani Appellant****Versus****General Public and another Respondents.****Coram*****The Hon'ble Mr. Justice Kuldip Singh, Judge*****Whether approved for reporting? yes****For the Appellant : Mr. R.K. Sharma, Advocate.****For respondent No. 2 : Mr. Anand Sharma, Advocate.****Kuldip Singh, J**

The applicant Smt. Pathani is in appeal against the order dated 16.8.2001 passed by learned Senior Sub Judge(Civil Judge, Senior Division), Chamba, District Chamba in Succ. Act No.1/96, dismissing the application of applicant under Section 372 of Indian Succession Act, 1925 (for short Act) for grant of Succession Certificate in respect of the securities, pension, gratuity etc. of deceased Baldev.

The facts in brief as emerge from the application filed by applicant for grant of Succession Certificate are that Baldev resident of village Idei died on 11-10-1994 while he was serving in Power Grid Corporation of India as a Security guard. He left behind applicant widow as sole legal heir to succeed him under Hindu Succession Act. The applicant is legally wedded wife of deceased. On these grounds she prayed for

Whether reporters of Local Papers may be allowed to see the Judgment? yes

grant of Succession Certificate with respect to the pension securities, gratuity and other dues of deceased Baldev left by him at the time of his death.

The application is resisted by respondent No.2 Amar Singh who filed reply and took preliminary objections that applicant is not the widow of Baldev. He is adopted son of deceased Baldev and is only legal heir entitled to the estate of deceased Baldev. The applicant is the widow of Chaudhary. He also took objection that particulars of securities etc. have not been given. The learned court below dismissed the application by holding under issue No.1 that applicant is not the widow of Baldev and therefore, while discussing issue No.3 it has been held that the application is not maintainable. The issue No.2 has been decided against respondent No.2 and it has been held that he is not adopted son of deceased Baldev. The jurisdiction of the Court to decide the petition has been decided in affirmative in favour of applicant. The respondent No.2 has not filed any appeal against the impugned order nor he has filed cross-objections in the present appeal.

I have heard the learned counsel for the parties and also gone through the record.

The learned counsel for the applicant-appellant has submitted that there is ample evidence on record that applicant is the legally wedded wife of Baldev. They lived together as husband and wife and treated so by the society. Baldev in his service record had shown applicant Pathani as his wife. The applicant is the only legal heir of deceased Baldev and therefore, she is entitled to Succession Certificate, as prayed in the application. It has been submitted that respondent No.2 has no locus standi to object for grant of Succession Certificate to the applicant in as much as it has been held by the Court below that he is not adopted son of

Baldev. He has accepted this finding as he has not filed an appeal against the impugned order nor filed cross-objections in the present appeal. The respondent No.2 has put claim to the estate of Baldev only on the basis of adoption and not on any other ground. The learned counsel for respondent No.2 has supported the impugned order and has submitted that applicant is not the widow of deceased Baldev and therefore, she is not entitled to Succession Certificate as claimed by her. He has submitted that the application is not in accordance with Section 372 of the Act as in the application no disclosure of Teju has been made who has been shown son of deceased Baldev in Nomination Form Ex.PW-4/B. His submission is that application under Section 372 is not maintainable.

The applicant has appeared as AW-1 and has supported her case generally. She has stated that Baldev was her husband and they were married about 20-25 years ago. He did not adopt any child. She has stated that she and her husband earlier lived at Surgani than Jalandhar and thereafter at Basoli. She is entitled to dues of her husband. In cross examination she has stated that earlier her husband was Chaudhary who has died long time back when her youngest son Mohindru from Chaudhary was six years old who is now 26 years old. AW-2 Dinu has stated that Pathani and Baldev were living in the house of Babu Ram in Surgani. At Jalandhar they were living in the house of some Sardar. AW-3 Madan Lal has stated that in Basoli Baldev and Pathani were his tenants. They were living as husband and wife. AW-4 Vinayak Chauhan, Dy. Manager has proved Ex.PW-4/A and Ex.PW-4/B. In Ex.PW-4/B declaration and nomination form under the Employees Provident Funds Scheme, 1952, Pathani and Teju are shown as nominees of Baldev. OW-1 Amar Singh has stated that Baldev was his real uncle and he was earlier married to Bhagni but he divorced her. He did not perform any marriage after divorce.

He was adopted son of Baldev. He has produced Ex.D-1 copy of parivar register, Ex.D-2 another copy of parivar register, Ex.D-3 copy of mutation No.192, Ex.D-4 copy of jamabandi 1992-93, Ex.D-5 copy of Shajra Nasab. He has stated that property of Baldev was mutated in his name. In cross-examination he has stated that no writing of adoption was prepared. OW-2 Gangu Ram has shown his ignorance that Pathani was the wife of Baldev. This is the entire evidence which has been led by the parties.

The learned counsel for the applicant has submitted that the marriage of Baldev with Pathani has been proved and it has also been established that they were living as husband and wife since long. He has submitted that there is a presumption of marriage when for long time a male and a female live together as husband and wife and for this proposition he has relied on the following judgments.

(1978) 3 Supreme Court Cases 527 titled BADRI PRASAD v. DY. DIRECTOR OF CONSOLIDATION AND OTHERS.

“A strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin. Law leans in favour of legitimacy and frowns upon bastardy”.

(2004) 3 Supreme Court Cases 199, titled REEMA AGGARWAL v. ANUPAM AND OTHERS.

Para-9: “So also where a man and woman have been proved to have lived together as husband and wife, the law will presume, until contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage”.

The learned counsel for applicant has further submitted that in Employees Provident Fund Scheme Declaration and Nomination Form Ex.PW-4/B deceased Baldev has shown Smt. Pathani as his wife. This document was prepared on 2.3.1992 when there was no dispute about the marital status of Baldev and Pathani. He has submitted that no doubt in Ex.PW-4/B Teju has been shown as son of Baldev but Teju despite publication of notice of the application has not come forward and filed any objection for grant of Succession Certificate to applicant.

The learned counsel for respondent No.2 has submitted that estate of deceased Baldev has been mutated in favour of respondent No.2 and he has relied upon Ex.D-1 to Ex.D-5 to show that he is adopted son of Baldev. The respondent No.2 for claiming the estate of Baldev has put up his claim only by way of adoption and not by way of any other relation with Baldev. He has miserably failed to prove his adoption by Baldev. The Court below has returned the finding of adoption against him. He has not challenged the impugned order by way of appeal or cross-objection. Therefore, it is too late for him to put forward his claim on the basis of his adoption by Baldev.

The learned counsel for respondent No.2 has further submitted that even if Baldev and Pathani lived together that would not give them status of husband and wife and for this proposition he has relied on the following case law:-

AIR 1965 Supreme court 1564: Bhaurao Shankar Lokhande and another v. The State of Maharashtra and another. Para-3 of the judgment is as follow:-

“The bare fact of a man and a woman living as husband and wife does not, at any rate, normally give them the status of husband and wife even though they may hold themselves out before society as husband

and wife and the society treats them as husband and wife”.

The learned counsel for respondent No.2 has relied on ***AIR 1994 Supreme Court 135: Surjit Kaur v. Garja Singh and others.*** In this case Hon'ble Supreme Court has relied ***AIR 1965 SC 1564 (supra).***

In ***(2004) 3 SCC 199*** the above two cases namely ***Bhaurao Shankar Lokhande and another and Surjit Kaur*** have been noticed. In ***Reema Aggarwal (supra)*** the Hon'ble Supreme Court has held that long living together gives presumption of marriage between a man and woman. Therefore, when a male and female lives together as husband and wife for long time then the law will presume a valid marriage between them.

In the present case as noticed above there is evidence on record that deceased Baldev and applicant Pathani lived together as husband and wife at different places for many years and they were treated as such by the society. Baldev himself nominated Pathani in Employees Provident Funds Scheme declaration and nomination form by admitting her his wife. Thus it is proved on record that Pathani is the widow of deceased Baldev.

Learned counsel for the applicant has submitted that even if disclosure of Teju in the application for grant of Succession Certificate by applicant has not been made in that case also this omission is not fatal and application is maintainable. He has submitted that such disclosure is directory and not mandatory as held in AIR 1999 Madhya Pradesh 31, titled Munni Devi and others vs., Anguri Devi. The contention in that case was that the application filed by Munni Devi for Succession Certificate deserves to be rejected as it was not in accordance with Section 372 of the Act. Para-55 of the report is as follows:-

“In the circumstances, the omission in question does not appear to be a fatal one so as to vitiate the entire proceedings specially when the publication of

the notice referred to hereinabove ensures and secures notice of the proceedings to every person having a claim or interest in the estate left by the deceased. The requirement in question, therefore, is only directory”.

The learned counsel for the applicant has submitted that despite publication of the notice of the application Teju did not file any objection for grant of Succession Certificate to the application of the applicant. The respondent No.2 has no locus standi to espouse the cause of Teju. He has relied on ***AIR 1988 Kerala 265, titled V.K. Kamalam v. Panchali Amma and others*** in which para-9 of the report is as follow:-

“The principles underlying Section 11 of the Code of Civil Procedure cannot be considered to be satisfied by a decision rendered in succession certificate proceedings. While instituting proceedings under the Succession Act for grant of succession certificate the parties are concerned only with regard to the competency of the parties to the entitlement of the certificate. The Courts while passing orders under the Succession Act in summary proceedings are not competent to grant the relief which can be claimed by the parties in a regular suit”

According to learned counsel for the applicant that the enquiry contemplated for grant of Succession Certificate is of summary nature and applicant has proved on record that she is widow of deceased Baldev and therefore, she is entitled to Succession Certificate of dues left by deceased Baldev.

On the basis of material on record and above discussion, I am of the view that the petitioner has proved that she is the widow of deceased Baldev. It is held that Smt. Pathani applicant is the widow of deceased

Baldev and is entitled for grant of Succession Certificate to the dues left by deceased Baldev at the time of his death.

In view of above discussion this appeal is accepted, impugned order is set aside. The case is remanded to Senior Sub Judge(Civil Judge, Senior Division), Chamba, for grant of Succession Certificate to Smt. Pathani- petitioner regarding the dues of deceased Baldev in the light of observations made above and in accordance with law. The parties through their counsel are directed to appear before the Senior Sub Judge (Civil Judge, Senior Division), Chamba on 11.6.2007. The Registry is directed to send the record of the trial Court immediately so as to reach before the date fixed.

(Kuldip Singh)
Judge

May 14 , 2007
(sks)